

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

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In the Matter of:)

Allocation of Spectrum Below)
5 GHz Transferred from)
Federal Government Use)

ET Docket No. 94-32

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

TO: The Commission

COMMENTS OF
FOREST INDUSTRIES TELECOMMUNICATION

Forest Industries Telecommunications ("FIT") hereby responds to the Notice of Proposed Rule Making in the above-captioned proceeding (FCC 94-272, released November 8, 1994; hereinafter cited as "Notice").

INTRODUCTION

FIT is the Commission-certified non-profit coordinator for the Forest Products Radio Service. For more than 40 years, FIT has been recognized by the Commission as the frequency coordinator for the Forest Products Radio Service.

FIT has nearly 2,000 members that range in size from Fortune 500 companies such as Weyerhaeuser Co., Georgia Pacific Corp., etc. to many small and medium sized contract loggers. Besides its coordination activities, FIT represents and advocates the radio spectrum needs of the forest products industry. Therefore, FIT is well-qualified to comment on the impact of the Commission's spectrum management decisions from the perspective of that industry.

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BACKGROUND

In the subject Notice the Commission seeks comment regarding the disposition of the first 50 MHz that is to be transferred from the Federal Government to the private sector pursuant to the Omnibus Budget Reconciliation Act of 1993 ("OBRA"). The Commission seeks comment on its particular proposal to allocate the spectrum to two wide categories, Fixed and Mobile. The theory upon which this proposal is based is that market forces would best guarantee that the spectrum is "put to its best and most valued use ..." Id. at para. 8. Further, the Notice seeks comment on the licensing of this spectrum within the Fixed and Mobile categories through the use of auctions.

The Notice proposes "to allow users freedom to choose the channelization, signal strength, modulation techniques and antenna characteristics they employ in providing service, consistent with not causing interference to other users. Interference to operations in adjacent service areas would be controlled through power limits at the service area boundaries." Id. at para. 10.

Although in the Notice the Commission demonstrates a preference for the generic allocations discussed above, the Notice also seeks comments regarding the issue of spectrum allocation to specific services.

DISCUSSION

FIT supports the Commission's goal of seeking the most intensive use of the subject spectrum. However, the allocation of the spectrum to categories as generic as Fixed and Mobile will not achieve this end. Rather, the agency's statutory obligation to allocate the radio spectrum in the public interest would be undermined by such a determination.

Section 303 of the Communication Act dictates, in pertinent part, that:

Except as otherwise provided in this Act, the Commission from time to time, as public convenience, interest, or necessity requires shall

* * *

(c) Assign bands of frequencies to the various classes of stations, and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate.

47 U.S.C. § 303(c). And Section 309(j), enacted as part of OBRA, explicitly states that "Nothing in this subsection, or in the use of competitive bidding shall -- (A) alter spectrum allocation criteria and procedures established by the other provisions of this chapter...." 47 U.S.C. § 309(j)(6).

Members of Congress were clear that when they gave the Commission the authority to auction, it was not meant to be substituted for the traditional allocations among services.

[I]t is time to give the concept of spectrum auctions a trial. Senator Stevens and I have thus crafted a compromise auction amendment that attempts to employ auctions as a way of distributing licenses without weakening nay of the public interest obligations of radio licensees. This proposal does not, however, allow auctions to be used to allocate frequencies among different service categories. Frequency allocation decisions must continue to be made by the FCC, not by the private marketplace. But this amendment would allow the FCC to use auctions to assign licenses to particular users.

139 Cong. Rec. S. 1438 (daily ed. February 4, 1993)(Statement of Sen Inouye); see also 139 Cong. Rec. S. 1442 (daily ed. February 4, 1993)(Statement of Sen. Stevens).

Policy concerns also weigh against the Fixed/Mobile proposal. The Notice refers to the petition filed by the Coalition of Private Users of Engineering Multimedia Technologies ("COPE"), of which FIT is a member. COPE seeks the allocation of additional spectrum to private, internal uses. Although COPE filed its petition approximately a year ago, the Notice defers COPE's concerns to an unknown later date, with the observation that "private users can receive service from commercial service providers and can compete in obtaining spectrum on the same basis as commercial providers." Id. at para. 16.

Private users such as FIT cannot simply "receive service from commercial service providers" Id. The operations of forest products companies, including the safety of personnel and equipment in forests where there is no other means of communication, require that the radio system be under the exclusive control of the licensee. Given the remoteness of many forest products operations, it is unreasonable to expect reliance on a third-party contractor for service.

Thus, even if the dubious view that the forest products industries could compete in auctions with carriers were correct, the failure by the Commission to recognize how critical privately-licensed radio systems are to productivity and safety is troubling.

The Commission has previously held that the needs of private users are not necessarily met by carriers. For example, the telephone industry argued against the Commission's proposal to liberalize the licensing of radio spectrum for private users' internal

purposes. At that time, the agency rejected telco arguments that business and industry could rely upon common carrier facilities. The Commission stated:

The record supports the determination that there is a need for private point-to-point systems. In many cases, the operation of the private users is such that it is not convenient or practicable for common carriers to provide such service (e.g., remote or isolated business operations). In this connection, it may be observed that certain of the private users now licensed endeavored to get the common carriers to provide such service initially, and constructed their private systems only when the carriers refused to do so. Even in areas where common carrier facilities and personnel are readily available, there appears to be a need for private systems.... [S]uch private systems would provide for better control and flexibility for meeting their own hour-by-hour operational and administrative needs.

Allocation of Frequencies in the Bands Above 890 Mc., 27 FCC 359, 413 (1959).

Both the record and the Notice fail to offer any reasoned explanation upon which to base this shift in position in violation of agency practice.

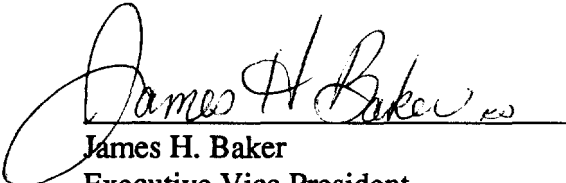
An agency's view of what is in the public interest may change, either with or without a change in circumstances. But an agency changing its course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.

Greater Boston Television Corporation v. F.C.C., 444 F.2d 841 (1970)(footnotes omitted). This problem in itself undermines the propriety of the proposed Fixed/Mobile measure.

CONCLUSION

The Commission's Notice asks (1) whether the agency should allocate spectrum to specific services and (2) what those services should be. The answer to question (1) is affirmative; the answer to question (2) is private. The Report and Order should so hold.

Respectfully submitted by:

A handwritten signature in cursive script, reading "James H. Baker", is written over a horizontal line.

James H. Baker
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JHB/klc

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